

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION  
NO: 5:04-CR-00062-BR

|                          |   |       |
|--------------------------|---|-------|
| UNITED STATES OF AMERICA | ) |       |
|                          | ) |       |
| v.                       | ) | ORDER |
|                          | ) |       |
|                          | ) |       |
| LEVERNE SILVER           | ) |       |
| Defendant                | ) |       |

This matter is before the court on defendant's 12 May 2011 motion to appoint counsel and motion to seal that motion. The government filed a response in opposition to the motion to appoint counsel but states that it does not oppose the motion to seal.

Defendant requests that the court appoint counsel to assist him with securing the government's filing of a motion under Fed. R. Crim. P. 35 based on defendant's substantial assistance. There is no constitutional right to counsel in conjunction with Rule 35 proceedings. See United States v. Taylor, 414 F.3d 528, 536 (4<sup>th</sup> Cir. 2005). Also, there is no statutory right to counsel on a Rule 35 motion. See United States v. Perry, No. 05-CR-101, 2007 WL 2209253, \*1 (E.D. Wis. July 27, 2007) ("A post-conviction motion for a reduction of sentence under Rule 35 does not constitute an ancillary matter within the meaning of [18 U.S.C.] § 3006A(c)." (citing United States v. Tidwell, 178 F.3d 946, 949 (7th Cir. 1999); United States v. Whitebird, 55 F.3d 1007, 1010-11 (5th Cir. 1995)). Further, the court declines to exercise its discretion to appoint counsel. The motion is DENIED.

Because defendant's motion contains significant details regarding his assistance to the government, in accordance with the court's standing order 09-SO-02 (E.D.N.C. 2/12/10), the

motion to seal is ALLOWED.

This 17 June 2011.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt  
Senior U.S. District Judge